

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

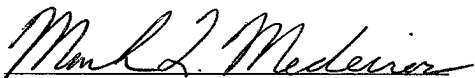
MARK F. MEDEIROS)	
)	
Plaintiff)	C.A. No. 09-107-S-LDA
)	
v.)	
)	
BANK OF AMERICA a/k/a)	
FIA CARD SERVICES, N.A.)	
)	
Defendant)	

**MOTION TO VACATE MAGISTRATE JUDGE LINCOLN D. ALMOND'S TEXT ORDER
GRANTING MOTION TO AMEND/CORRECT; GRANTING MOTION TO SET ASIDE DEFAULT
AND UPHOLD THE DEFAULT JUDGMENT BY JUDGE WILLIAM E. SMITH**

Pursuant to 28 U.S.C. § 636(b)(1)(B)(C) and LR Cv 72(a) the Plaintiff, Mark F. Medeiros motions this Honorable Court to Vacate Magistrate Judge Lincoln D. Almond's Text Order dated 5/13/09 granting Motion to Amend/ Correct; granting Motion to Set Aside Default and uphold the Default Judgment by Judge William E. Smith dated 4/28/09.

Magistrate Judge Lincoln D. Almond failed to file proposed findings and recommendations in his Text Order dated 5/13/09 pursuant to 28 U.S.C. § 636 (b)(1)(C) with the Court in regards to the hearing before him on 5/12/09 and forthwith mail a copy of his proposed findings and recommendations to all parties and to allow all parties time for objections to his Report and Recommendation pursuant to LR Cv 72 (d)(1)(2)(3).

Respectfully submitted this 22nd day of June 2009,

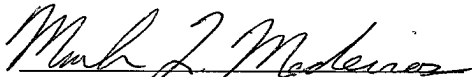


Mark F. Medeiros, Plaintiff
464 Eaton St.
Providence, Rhode Island 02908
Telephone (401) 273-9199

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO VACATE MAGISTRATE JUDGE LINCOLN D. ALMOND'S TEXT ORDER GRANTING MOTION TO AMEND/CORRECT; GRANTING MOTION TO SET ASIDE DEFAULT AND UPHOLD THE DEFAULT JUDGMENT BY JUDGE WILLIAM E. SMITH was filed with the Clerk of the United States District Court for the District of Rhode Island this 22nd day of June 2009 and was sent prepaid first class mail to the following:

Lauren F. Verni
Steven E. Snow
Patridge, Snow & Hahn, LLP
180 South Main St.
Providence, RI 02903


Mark F. Medeiros

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARK F. MEDEIROS)	
)	C.A. No. 09-107-S-LDA
Plaintiff)	
v.)	
)	
BANK OF AMERICA a/k/a)	
FIA CARD SERVICES, N.A.)	
)	
Defendant)	

**MEMORANDUM IN SUPPORT OF MOTION TO VACATE MAGISTRATE JUDGE LINCOLN D. ALMOND'S
TEXT ORDER GRANTING MOTION TO AMEND/CORRECT; GRANTING MOTION TO SET ASIDE DEFAULT
AND UPHOLD THE DEFAULT JUDGMENT BY JUDGE WILLIAM E. SMITH**

LR Cv 72(a) describes the Authority and duties of Magistrate Judges in Civil Cases:

Authority and Duties. A full-time or recalled magistrate judge shall perform any duties assigned by the Court or by a district judge and, in doing so, may exercise all powers conferred upon full- pursuant to 28 U.S.C. 28 U.S.C. § 636.

Magistrate Judge Lincoln D. Almond failed to file proposed findings and recommendations in his Text Order dated 5/13/09 pursuant to 28 U.S.C. § 636(b)(1)(C) with the Court in regards to the hearing before him on 5/12/09 and forthwith mail a copy of his proposed findings and recommendations to all parties and to allow all parties time for objections to his Report and Recommendation pursuant to LR Cv 72 (d)(1)(2)(3).

According to 28 U.S.C. § 636(b)(1)(B)(C):

- (1) Notwithstanding and provision of the law contrary-
- (B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, **and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court,** of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of court. A judge of the court shall make de novo determination of those portions of the report or specified findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

According to LR Cv (d)(1)(2)(3):

(d) Objections to Report and Recommendations.

(1) Time for Objections. Any objection to a Report and Recommendation by a magistrate judge shall be filed and served within ten (10) days after such Report and Recommendation is served on the objecting party.

(2) Content of Objections. An objection to a magistrate judge's Report and Recommendation shall be accompanied by a memorandum of law specifying the findings and/or recommendations to which objection is made, the basis for the objection, and a transcript of any evidentiary hearing(s) before the magistrate judge. The memorandum shall comply with LR Cv 7.

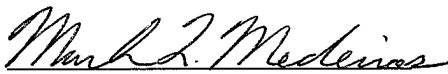
(3) Responses and Replies. A response to an objection shall be served and filed within ten (10) days after the objection is served. The objecting party may serve and file a reply to the response within ten (10) days thereafter. Unless otherwise permitted or required by the Court, nothing further shall be filed in support of or in opposition to an objection to a magistrate judge's Report and Recommendation. Any response and/or reply shall comply with LR Cv 7.

WHEREFORE, the Plaintiff respectfully moves that this Honorable Court grant his Motion to Vacate

Magistrate Lincoln D. Almond's Text Order dated 5/13/09 granting Motion to Amend/ Correct; granting Motion to

Set Aside Default and uphold the Default Judgment by Judge William E. Smith dated 4/28/09.

Respectfully submitted this 22nd day of June 2009,

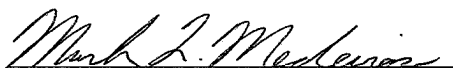


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